

## **ICRA PRESENTATION TO THE DART STUDY COMMITTEE**

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In 1862, the first Iowa official court reporter, Cyrus A. Mosier, sat down in a judicial proceeding with pen in hand to laboriously produce the record using shorthand. In the last 140-plus years, the progress in preserving the record – in terms of alacrity, accuracy, and accessibility – has been astounding. Now, we run the risk of moving backwards, not because the process is broken, but because of a false sense of economy.

Good morning. I am Sheryl Culver, president of the Iowa Court Reporters Association, and with me is Karen Teig, past president. Thank you for allowing us the opportunity to present our perspective on the task with which you are charged: to determine the feasibility of replacing court reporters with digital audio recording equipment in the courts of the State of Iowa.

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In November 2008, Sheryl and myself, along with Bill Wimmer, met with Chief Justice Ternus and State Court Administrator David Boyd at our annual meeting. This meeting was an opportunity we enjoyed in order to share issues relating to official court reporters. During the meeting the reinvention of the official court reporter was discussed. At the Iowa Court Reporters Association January 16, 2009, board meeting the ICRA board voted to commission a long-range planning session designed to reconsider and redefine the role of the court reporter in our courtrooms. We intended to request input and participation from

attorneys, judges and other court users. On February 3, 2009, a phone call from Chief Justice Ternus halted our progress toward long-range planning.

The science of certified court reporting has developed to the point of being unsurpassed in terms of accuracy, reliability, and accessibility. Why do I call court reporting a science? Because it is based on shorthand techniques developed through the years and has evolved from the early pen shorthand writers and stenotype machines to wireless computer aided transcription and realtime reporting.

A court reporting student must complete a rigorous educational process that includes not just the essentials of stenographic techniques, but also a course of study encompassing language, law, and logistics. Iowa is fortunate to have a ready training ground for court reporters. A majority of the states that exclusively use digital recording in all jurisdictions of their courts do so because they have not been able to find reporters to fill reporting jobs. Iowa is in a unique position of not experiencing a shortage of court reporters thanks to AIB College of Business in Des Moines. AIB is one of the, if not the, premier reporting schools in the country with a long history of graduating excellent reporters. AIB helps ensure there is a steady stream of qualified reporters ready to preserve the record in our state.

Court reporters have been serving the Iowa court system for over 140 years. Court reporters in Iowa have been held to a high standard by the courts, attorneys, and each other. Reporters have gladly met that standard and are proud of the high quality of service provided. Iowa Court Rule 46.2 states: “Shorthand reporting...is the professional skill whose practice by official shorthand reporters and freelance shorthand reporters serves the judicial branch of State government in courts of record, references by such courts or the law, depositions taken by shorthand reporters, or proceedings of like character, with the end in view of ensuring the

accuracy and integrity of the record upon which courts rely for evidence, trial, and appellate review.”

Completing a course of study is not sufficient to become an Iowa judicial reporter. Any reporter wishing to become certified to work in court must pass a comprehensive test administered by the Iowa Board of Examiners of Shorthand Reporters. Over 80 years ago, our state instituted the Iowa Certified Shorthand Reporter examination. Not every state in this nation has a certification examination and many are working to implement a competency examination such as Iowa’s CSR. In addition, once a reporter is licensed, yearly continuing education is required to maintain that status.

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The advent of the computer has greatly assisted court reporters in preserving and providing access to the record. Every day, in courtrooms across Iowa, court reporters provide realtime reporting, or immediate voice-to-text translation, for their judges and/or participants. This means instantaneous access to the record – access for judges and lawyers. Use of realtime reporting while on the bench assists judges in ruling on objections and aids them in preparing rulings. Realtime translation also frees the judge from taking extensive contemporaneous notes during the testimony, enabling them to observe witnesses as they testify to aid the judge in determining credibility. Realtime translation is an assistive tool that helps judges work more confidently and efficiently. Digital recording equipment cannot accomplish realtime; and if court reporters are replaced with digital recording, the many judges in our state who rely on realtime reporting would be left without it.

Court reporters capable of realtime reporting are also able to assist the deaf and hard-of-

hearing courtroom participants – judges, attorneys, litigants, witnesses, and jurors – by allowing the participant to read the court reporter’s realtime translation during the court proceeding. Realtime translation complies with the Americans with Disabilities Act by allowing English reading people with loss of hearing to participate in our judicial system. Reporters capable of realtime reporting provide this service at no charge to the State, while certified sign language interpreters charge the State \$75 per hour with a minimum eight-hour charge if they are not notified within 24 hours that their services are not required.

In the courtroom, the reporter is another set of eyes and ears for the court. Recently in an Iowa courtroom, during a domestic abuse hearing, a judge was intently listening to questions from counsel, responses of the witness and observing the witness on the stand, plus taking notes on her computer. With the use of realtime reporting, this judge’s reporter wrote a note to her judge that an observer in the gallery was nodding and shaking his head, giving the witness cues as to how to testify. After reading this note on her computer screen, the judge immediately looked up and made eye contact with the observer, and the gestures stopped. All this happened without a break in the flow of testimony, a recess called or a caution expressed.

Official court reporters in Iowa do much more than preserve and provide the record of proceedings. In our interaction with leaders of other state court reporting associations, ICRA has learned that Iowa is truly unique in the way we work. Reporters from other states are amazed when we share with them the responsibilities of our positions, the relationship we share with our judges, and the teamwork approach with which Iowa judges and reporters work. Each day, every official reporter is called upon to assist judges, attorneys, participants and court administration in seeing justice is done. You have been provided a handout of an Iowa reporter’s description of her job duties. Please take the time to review

this document. We do not claim every reporter is doing each of these tasks; however, all of these tasks are entrusted to court reporters.

Reporters from other states have shared their experiences with ICRA. Areas in Illinois use digital recording equipment in some of their courtrooms, and the official court reporters are used to monitor the courtrooms and transcribe the digital audio recordings into transcripts. Earlier this month, an Illinois court reporter contacted me and shared issues they face when preparing transcripts from digital audio recording. She said one of the biggest problems is sound. For instance, a person coughed directly into the microphone, and there was no way she could hear the answer. In addition, a reporter can be monitoring one courtroom and not realize terrible static is coming from a microphone in another courtroom they are monitoring. By the time they switch to monitor the courtroom with the static, several questions and answers can be missed, and they cannot go back and recreate the record.

This reporter said with the use of digital recording, voir dire, or jury selection, is very difficult to hear. It is often impossible to tell who is talking. They do not have a microphone near the jury box; therefore, she cannot hear the jurors' answers to the questions being put to the prospective jurors by the attorneys.

She stressed a constant struggle is not knowing who is talking when there are two, three, four, or five male speakers. She said you think you know who they are and suddenly whom she thought sounded like Mr. Jones is really Mr. Smith. Even when the judges tell counsel to state their names, the attorneys comply in the beginning and then forget thereafter. To make an accurate record, the attorneys have to state their name each time they speak.

She concluded that the only reason the system in Illinois "works" is that the reporters work very hard at making the record. They spend hours researching things that they otherwise would not if they were able to clarify with a speaker live at the time of the proceeding.

For sure, sound is a very fickle thing to capture accurately. Court reporters have an inherent advantage over digital recording that is dependent upon good equipment, a relatively quiet and controlled surrounding, and very precise microphone placement. Let me make this important distinction: Digital recording takes down sound, and court reporters take down voices. Court reporters can discriminate between testimony and background noise such as sirens, coughing, construction, and HVAC units turning on and off. The reporter knows when an attorney and client are having a confidential attorney-client conversation; but if an attorney in a digital recording courtroom forgets to push a "mute" button, if there is one, the digital recording technology cannot identify that conversation as confidential and off the record. If a speaker is difficult to understand, moves about the courtroom, or speaks in a whisper, the court reporter is able to ask them to speak louder and repeat what they said. When a witness responds with a head gesture or inaudible response, the court reporter can ask the witness to speak audibly or can make a notation in the record of a nonverbal answer. By contrast, with digital recording, as related by the reporter in Illinois, attorneys and witnesses need to stay by their microphones if the sound is to be audible.

ICRA has learned that, in other states using digital recording technology, attorneys hire freelance court reporters to report their trials so they are assured of a verbatim record. ICRA has also been informed by some Iowa trial attorneys that if digital recording equipment replaces court reporters in Iowa, the attorneys plan to do the same thing. Do you suppose the State of Iowa will pay the expense of a freelance reporter at the request of an indigent defendant? If not, I suggest that indigent defendant does not have the same access to the

courts as the party who has the funds to hire a freelance reporter, and that is a due process issue.

This year the State of Utah replaced its court reporters with digital recording. The following is from an email sent by a Utah reporter, and it discusses this issue.

“As the Utah state official reporters were let go on June 30th, we are now plowing new ground. I was hired to do a 702 hearing last month, and was thrown into new water. Even when I have been employed as a freelance reporter by a party to do realtime or daily copy in the courtroom, the Court has turned off the audio and I was the official record. Now that they don’t have “official” reporters, they are refusing to do this (even when their air system is SO LOUD that they have to shut it off to record, and in July, in the desert, it’s over 100 degrees in that courtroom!) Then, when the party not hiring me came over to ask for a transcript of opening statements, the party that hired me (overhearing the request) rushed over and informed the other side that they had hired me and I belonged to them and they did not have access to my services.” This is one example of inefficiency that digital recording has brought to Utah’s new digital recording court system.

During vendor demonstrations last month in this building, the digital recording vendors said that even when using digital recording, court reporters are an integral part of the process. None of the four vendors could speak to the accuracy of the final product – the transcript. One vendor said, “A human still has to generate the transcript,” and the JAVS vendor stated, “Inaudibles are hard to overcome.”

As Chief Justice Ternus so aptly recognized in her June 25 news release: “Because of the effects of the nation’s economic downturn, people need court services now more than ever.” Yes, they do, and they need the highest standard of justice available. That standard

is not attainable with the use of digital audio recording equipment. A complete and nothing less than accurate and accessible record of the evidence, what was said and what was decided, is the very basis of every legal action – no matter whether that action is in associate court, probate court, juvenile court, or district court.

ICRA understands the Judicial Branch is facing serious economic challenges that require budget reexamination, but the proposed use of digital recording equipment can only compromise the integrity of Iowa's legal system.

Thank you for the opportunity to speak to you today. The Iowa Court Reporters Association appreciates that you requested our opinions. We are still in the process of gathering additional information to inform this committee why the use of digital recording equipment is not in anyone's best interest at this stage of its technology. We anticipate having that additional information well before this committee concludes its work and ask for the opportunity to submit it to you in written form. We welcome the opportunity to work with you to ensure the highest standards of justice do not suffer in Iowa.

Jane Weingart, Chair of the Board of Trustees of AIB Business of College, has joined us to share AIB's perspective.

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